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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

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Technology Center 2600

Application Number: 09/076,517
Filing Date: May 12, 1998
Appellant(s): LU ET AL.

James A. Flight
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/13/2005 appealing from the Office action mailed 3/11/2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

Aras et al. (U.S. Patent No. 5,872,588)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Specification

The amendment filed 8/28/2002 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material that is not supported by the original disclosure is as follows:

(a) the paragraph bridging pages 48-49 beginning at "As described at Column 16, lines 8-29 of U.S. patent No. 5,481,294" and ending at "(at yet a later time) to a different channel carrying another program".

(b) the paragraph bridging pages 53-54 beginning at "As described at Column 6, lines 9-15 of U.S. patent No. 5,594,934" and ending at "(head-ends for transmitting cable channel and/or the like".

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 70-71 are rejected under 35 U.S.C. 102(e) as being anticipated by Aras et al. (Aras) (of record).

Considering claim 70, Aras discloses an audience measurement method for digital television comprising the steps of:

a) extracting at least one identification code (e.g. a first AVI, 343-567-231 - figure 12) from at least one digital multiplexed stream (col. 6, line 45 - col. 7, line 5) of a first channel, from a control stream (AVI is a control stream or the control stream in MPEG processing described at col. 6, lines 64) of a multiplexed digital transmission, when reception of the first channel by a receiver (1558, 1559, 1561) begins (see the entire reference including but not limited to col. 7, line 30 - col. 8, line 37, col. 13, lines 53-58, col. 20, lines 15-33 and col. 24, line 61 - col. 25, line 21);

b) recording the at least one identification code extracted and the time that reception of the first channel begins (see the entire reference including but not limited to col. 8, line 52-col. 9, line 16, col. 14, lines 8-24 and col. col. 20, lines 15-40, wherein the time may

be time index (207-figure 2 or 603-figure 12 or start/end times such as 609-start time, 611-end time);

c) extracting at least one identification code (e.g. a subsequent AVI, 565-778-543 - figure 12) from at least one digital multiplexed stream (col. 6, line 45 - col. 7, line 5) of any subsequent channel, from a control stream (AVI is a control stream or the control stream in MPEG processing described at col. 6, lines 64), when reception of the subsequent channel by the receiver begins (see the entire reference including but not limited to col. 7, line 30 - col. 8, line 37, col. 13, lines 53-58, col. 20, lines 15-33 and col. 24, line 61 - col. 25, line 21); and

d) recording the at least one identification code extracted and the time that reception of the subsequent channel begins (see the entire reference including but not limited to col. 8, line 52-col. 9, line 16, col. 14, lines 8-24 and col. col. 20, lines 15-40, wherein the time may be time index (207-figure 2 or 603-figure 12 or start/end times such as 609-start time, 611-end time)

Claim 71 is met by the time information described throughout the entire reference including but not limited to col. 8, line 52-col. 9, line 16, col. 14, lines 8-24 and col. col. 20, lines 15-40, wherein the time may be time index (207-figure 2 or 603-figure 12 or start/end times such as 609-start time, 611-end time).

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 159 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aras.

Considering claim 159, Aras discloses that his invention relates to a method and apparatus for collecting subscriber behavior in a broadcast and/or interactive environment (col. 1, lines 15-18) and that the collected information is used for statistical analysis by market research companies (col. 1, line 50 - col. 2, line 41) Aras also discloses that the system can be modified at col. 27, lines 9-11.

However, he fails to specifically disclose that the audience rating system is for radio as recited in the claim.

The prior art is replete with numerous examples of collecting broadcast audience behavior for statistical analysis purposes by Market Research companies. For example, a Market Research company estimating market share to determine advertisement rates. First, note that patents 4,718,106, 4,955,070, WO 91/11062, WO 94/11989, 5,526,427, 5,574,962 (provided by Applicant in the IDS filed 6/22/2001) all disclose collecting behavior from radio and/or television audiences. Secondly, note that patent 5,594,934 (Lu et) describes audience measurement system for television and radio (See the instant application at page 3, line 5, the IDS filed by applicant on 6/22/2001 and the Declaration provided by Michael Dolan at page 3). Thirdly, television and radio are technically related and are represented by the leading alliance for broadcast signals

(National Association of Broadcasters) (See the Declaration provided by Michael A. Dolan at page 3).

It would have been obvious to one of ordinary skill in the art to modify Aras' system (if necessary) to include any broadcast media, such as radio, for the typical advantage of collecting audience behavior for statistical analysis by Market Research companies.

(10) Response to Argument

Ground 1:

A. Claim 70 Does Not Contain Any of the Objected to Claim Language

The examiner agrees with the Applicant that the 112 rejection should have addressed claim 71, not claim 70. In regards to the typographical error, in view of the Applicant's arguments to the 112 first paragraph rejection, the rejection has been rescinded in regards to claims 71 and 159 for the limitation, "recording time that reception by the receiver is ended" (see response to the 112 argument regarding this limitation below).

B. The Written Description Requirement Does Not Require Ipsis Verbis Usage of the Claim Language

Applicant argues, "all of the rejections appear to be based on the premise that the rejected claims are not supported by the specification because the exact words used in those claims do not appear word-for-word in the specification" and "the

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specification is not required to teach what is known and/or obvious to a person of ordinary skill in the art...under 35 U.S.C. §112, a specification need not teach that which is obvious to those in the art". Again, in regards to claims 71 and 159, the examiner has rescinded the 112 first paragraph rejection (made by the previous examiner) in response to the arguments made by Applicant (see below).

C. The § 112 Rejection of Claim 71 Is In Error

The Applicant states various arguments regarding the 112 first paragraph rejection of claim 71. The examiner agrees with the following argument on page 14, Lines 3-10 for stating an example of a channel change and the logging of the start and end time thereof. As stated on Page 47, Line 19 through Page 48, Line 11 and Figure 7 (steps 510 and 512) the system logs a currently tuned TV programs date and time, as long as the current packet label does not match the previous packet label received. Therefore, if the user changes the channel, the system would inherently log the name and time of the new television channel being viewed and the new time would inherently represent the end time of the previously viewed television program. Therefore, the 112 first paragraph rejection is rescinded and all arguments are now moot.

D. The Examiner's Counterarguments Concerning Claim 71 Are In Error

As stated in the rebuttal of argument **C** above, the 112 first paragraph rejection has been rescinded, therefore all arguments regarding this rejection are moot.

E. The § 112 Rejection of Claim 159 Is In Error

Applicant argues that the phrase “and radio” is taught in relation to the claim limitations of claims 70 and 159. The examiner agrees that the Lu reference (U.S. Patent 5,594,924), which has been incorporated by reference into the specification of the instant application, supports a radio signal at Column 6, Lines 11-16. The examiner notes that Lu further teaches this limitation by stating, “*The tunable receiver 20 may be a television receiver, a radio receiver, and/or the like.*” Therefore, the 112 first paragraph rejection regarding the radio signal limitation in claim 159, is rescinded.

F. The Examiner’s Counterarguments Concerning Claim 159 Are In Error

See section E regarding the 112 first paragraph rejection of claim 159, which has been rescinded.

G. The Examiner Applies An Inconsistent Level Of Ordinary Skill In The § 112 And Art Rejection

Again, in regards to claims 71 and 159, the examiner has rescinded the 112 first paragraph rejection (made by the previous examiner) in response to the arguments made by Applicant (see above).

Ground 2: The Examiner's Contention That Claims 70, 71 And 159 Are Anticipated By Aras et al. Is In Error

Applicant states, "the rejection of claim 70 presents a threshold issue as to what constitutes a "control stream"". The examiner notes that the specification provides no clear definition of a "control stream" and therefore, the examiner has given this limitation the broadest reasonable interpretation. The examiner interprets the limitation "control stream" as any stream of video, audio and/or data that is used by the receiver to control any function of a receiver. For example, in Aras, a video stream allows control of the receiver to display a video program, and an audio stream allows control of the receiver to play the audio for the television program currently being viewed, and also in Aras, a data stream such as the AVI codes that are embedded to various places in the broadcast stream, allow control various processing of the reception, distribution and processing of the video, audio and/or data streams (see Column 3, Lines 10-28).

Applicant states that a "control stream" would be understood by a person of ordinary skill in the art to encompass a program guide or other stream directed purely to the operation of the reception equipment as opposed to data streams reflecting content, which may be tuned and presented by the reception equipment.

The examiner notes that by Applicant's own definition, Aras meets the limitation of a "control stream". A video, audio or any type of data stream (which are all transmitted together) is "directed purely to the operation of the reception equipment", and therefore can be considered a control stream, according to the definition provided by the Applicant.

Applicant argues that the Final Office Action contends that Aras also teaches or suggests logging PIDs from program guides/control streams. The examiner disagrees and notes that the Final Office Action never states a PID or program guides in the rejection. Aras clearly discloses extracting an identification code (the AVI that is exacted from a control stream, disclosed at Column 7, Lines 31-33, Column 7, Lines 64-67 and Column 13, Lines 25-58 (which specifically discloses the different control streams, per Applicant's definition)).

Applicant also argues that the codes of Aras have nothing to do with the MPEG algorithm. The examiner disagrees and cites Column 13, Lines 44-52, which discloses that AVI information can be inserted as private data and that the presence of an MPEG-2 transport stream in a data channel can be detected through sync_byte field of the MPEG-2 transport packets. Therefore, the MPEG transport packets that carry the audio, video and data (which again, are all considered control streams according to Applicant's definition above) can have AVI information inserted into them, therefore, Aras clearly teaches that the AVI codes are a part of the MPEG algorithm. The examiner simply cites MPEG stream as another video, audio and data transport disclosed by Aras, for transmitting the AVI information embedded thereto.

Applicant also argues that Aras in no way timestamps codes which appear in the "control stream" associated with the MPEG process as a vehicle for determining when reception of the channel begins. Aras clearly teaches that the video, audio and data (control streams) can be encoded in various formats, including the MPEG standard, where the AVI information can be embedded therein (see Column 6, Lines 62-65 and

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Column 13, Lines 44-50 and other sections of the Final Office Action). Aras also clearly teaches that upon reception of the control stream, not only is the AVI information extracted (see Column 13, Lines 44-50 and other sections of the Final Office Action), but a start and end time (timestamp codes which appear in the control stream) is also extracted (see Figure 12 and Column 20, Lines 15-40).

The Applicant's remaining arguments state that the AVI information codes are embedded into a data stream, not a control stream. Again, the Applicant has defined "control stream" as, "or other stream directed purely to the operation of the reception equipment". Aras discloses that the AVI information can be embedded in various control stream of the transmitted broadcast signal (audio, video or data) at Column 13, Lines 34-50, including an NTSC video signal or an MPEG video signal. Since any of these streams (video, audio or data stream) are "other stream(s) directed purely to the operation of the reception equipment", by Applicant's own definition, the AVI information code(s) are embedded into a "control stream". Therefore, the data stream in the cited (by Applicant) portions of Aras is clearly a "control stream".

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

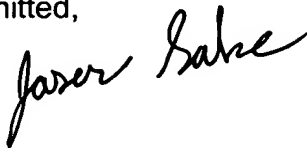
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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jason Salce

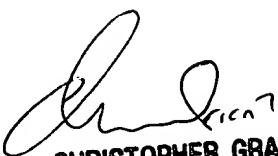
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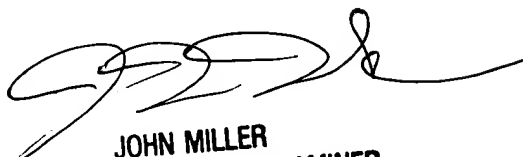
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